

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

UNITED STATES OF AMERICA,

VS.

CRIMINAL ACTION NO. 4:05CR128-P-B

TONY CONROD,

DEFENDANT.

ORDER

This matter comes before the court upon Defendant's Motion to Suppress Hearsay Statements of Co-Conspirators During Opening Statement and Throughout the Trial [31-1]. Upon due consideration of the motion and the response filed thereto, the court finds as follows, to-wit:

The motion is granted insofar as the court will require the Government to establish the admissibility of the co-conspirator statements outside the presence of the jury. Therefore, the Government may not mention the co-conspirator hearsay statements during opening statements. However, since the court's "determination of admissibility is normally to be made during the presentation of the government's case in chief and before the evidence is heard by the jury," *U.S. v. James*, 590 F.2d 575, 581 (5th Cir. 1979) (en banc), *cert. denied* 442 U.S. 917 (1979) (invalidated on different grounds by *Bourjaily v. United States*, 483 U.S. 171 (1987)) the court will not suppress the statements throughout trial in the event the court determines that the statements are admissible under *Bourjaily* standards.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's Motion to Suppress

Hearsay Statements of Co-Conspirators During Opening Statement and Throughout the Trial [31-1]
is **GRANTED IN PART AND DENIED IN PART** as discussed above.

SO ORDERED this the 14th day of June, A.D., 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE